

**BOARD OF ZONING APPEALS
PUBLIC HEARING
MINUTES
October 16, 2013**

The Board of Zoning Appeals (BZA) held three (3) advertised public hearings in the Council Room of the Vienna Town Hall located at 127 Center Street, South, Vienna, Virginia, on October 16, 2013, beginning at 8:00 PM with Donald Chumley presiding as Chair. The following members were present: Marshall Potter, Robert Dowler, Robert Petersen, George Creed and William Harrison. Also attending and representing staff were Gregory M. Hembree, AICP, Director of Planning & Zoning, Mike Gallagher, Deputy Director of Public Works and Emily Goodman, Board Clerk. Absent was Board member Gregory Haight.

Chairman Chumley took a moment before the meeting to go over the powers and purpose of the Board, which are listed on the back of the agenda. Any item will need four votes to pass. If anyone is unhappy with the decision, they have 30 days to appeal. He asked if there were any questions and as there were none he proceeded to the first item.

ITEM NO. 1

Request for approval of a variance from Sections 18-33F, 18-134A and 18-208 of the Vienna Town Code to construct a new dwelling in excess of maximum permitted lot coverage, with a driveway design in conflict with the Town Code and on a nonconforming lot located at 825 Ninovan Road SE and in the RS-10, Single Family Detached Residential zone. Application filed by Smith Engineering, agent for Khosrow Goudarzi, owner.

Anthony Venafro, a representative from Smith Engineering was sworn in to speak.

Keith Martin, a lawyer representing Mr. Goudarzi, approached the Board to give testimony. Mr. Martin said his client reduced his application down to the most minimum and reasonable use of the property. He knows the Board must weigh very strict criteria and he thinks this case truly meets the criteria of unusually restricting reasonable use of the property. He went through the transcript of the previous meeting and this evening's application is totally different. One of the previous concerns of the neighbors was home style, although that really doesn't have anything to do with a variance request, it does have to do with impact on adjacent properties. Before the style was Victorian, now it is Craftsman. Before they were asking for front and back setback variances, because there is a very tiny building envelope on the lot, now they are meeting those setbacks. There was a lot of concern regarding runoff and storm water management. They have proposed an infiltration trench to catch the water. Between the new footprint with the infiltration trench and the driveway design, runoff will be equal to or less than a house with 25 percent lot coverage. Last time they were asking for 39 percent lot coverage and now they are down to 29 percent. They are prepared to throw on the table a pervious paver driveway design that will get the lot coverage down to 25.8 percent. The neighbors were concerned with windows, before there were 19 and now they are down to 13. He sent a letter to the neighbors trying to reach out and only got one response but that person did not want to meet with him to discuss the proposal. His client has tried to reach out across the fence and the neighbor turned his back and walked away. He firmly believes that this case meets the criteria set forth in the

Town Code which allows the BZA to grant a variance. The property was acquired in good faith. The shape of the lot is a pipe stem, which is no longer allowed. If the lot was not a pipe stem, they would not need such a long driveway and could build what they are asking. The lot coverage requirement of 25 percent unreasonably restricts the use of the lot. They are not proposing a "McMansion"; the house is only 25 feet deep. They've tried to meet the neighbors' concerns. He knows that people want this to go away but his client deserves the right to raise a family outside of a cracker box. While Town staff understands the engineering principles behind the porous pavers, the Town Code does not allow them to be taken into account in regards to lot coverage calculations. However, according to standard engineering principles, using the pervious pavers for the driveway would get the lot coverage equivalent to 25.8 percent.

Mr. Petersen asked Mr. Martin if his client had attempted to reach a design that would meet the 25 percent lot coverage and Mr. Martin said no. The footprint would have to be reduced by 520 square feet. It would be possible but not practical. They did ask the builder to get within the building envelope. Most of the concerns from the March meeting have been addressed and he believes what they are asking for is reasonable.

Mr. Dowler said the original application submitted included concrete strips for a driveway that brought the lot coverage to 29.8 percent. He asked Mr. Martin if he is saying that the pervious pavers would bring the lot coverage down to 25.8 percent and Mr. Martin said yes, it would be equivalent to 25.8 percent. Mr. Dowler said one of the previous concerns was a neighbor who was already getting runoff from the driveway and asked Mr. Martin which driveway version would mitigate that problem. Mr. Martin answered that he thinks the porous pavers would be better but also that the infiltration trench will catch any runoff going in that direction. The client has also seeded his grass to try to help with the runoff but some of the problem was already there before he bought the property.

Mr. Potter asked if Mr. Martin had any figures or calculations to support the claim he was making regarding the porous pavers and Mr. Martin said he did but that it is also industry standard.

Mr. Potter said the owner bought the house even though he was aware of the problems and Mr. Martin replied the owner was aware that the house is small but thought he would be able to add on or rebuild within reason. Mr. Potter said he'd like to hear the design on the infiltration trench and Mr. Martin passed out a diagram.

Mr. Harrison asked if the house being proposed is larger or smaller than the house that was considered in March and Mr. Martin said it is smaller.

Mr. Creed said his biggest concern was runoff onto Lot 1 and it looks like the infiltration trench will take care of that.

Mr. Venafrò approached the Board to explain the infiltration trench. Mr. Venafrò said the lot right now, which is a quarter of an acre, will produce one cubic foot per second of runoff in a ten year storm event. A ten year storm event is an industry standard measurement. The site is split from the left and the right regarding where the drainage goes. Some of it goes towards lot 1 and the rest towards the driveway to lot 2a. With the proposed improvements, a little less than half of the lot will drain into the infiltration trench. The purpose of the infiltration trench is to capture the water and

release it into the subsoil. It relies on the infiltration rate of the subsoil. The homeowners spent money to hire a geotechnical soil engineer to test their soil.

Mr. Potter asked if there are certain soils which are more susceptible to an infiltration trench and if so, are they present in this case, and Mr. Venafo said the soil present on the lot is acceptable for infiltration practices based on the testing done by the geotechnical consultant.

Mr. Potter asked what type of soil was detected and Mr. Venafo said it is called Glenelg. Mr. Potter asked what the absorption characteristics of Glenelg are and Mr. Venafo said its infiltration rate is 12 inches per hour and the minimum needed for an infiltration trench is 0.52 inches per hour. Any water that enters the infiltration trench will seep into the ground and not enter lot 1.

Mr. Venafo explained that the design of an infiltration trench is to layer sand at the bottom, gravel in the middle and the surface can either be sod and pea gravel or just gravel. The left side of the lot will drain into the infiltration trench up to a ten year storm event. Anything over a ten year storm event, which is an unusual occurrence, will bypass the infiltration trench and follow the path that the water follows today. On the right side of the lot, the pervious area is being reduced which reduces the runoff on that portion of the site.

Mr. Petersen asked what Mr. Venafo meant by pervious area being reduced and Mr. Venafo said the footprint is being reduced.

Mr. Creed asked if the ten-year storm event is exceeded, how much additional water will flow to lot 1 and Mr. Venafo said he is not sure. Mr. Creed asked how often the Town will see a storm like that and Mr. Venafo said he is not sure.

Mike Gallagher was sworn in to speak. Mr. Gallagher explained that a ten year storm event means each year there is a ten percent chance of a storm that large occurring.

Mr. Martin said under existing conditions a storm exceeding a ten year storm event would create excessive water flow and Mr. Gallagher agreed.

Mr. Venafo pointed out the current impervious area is 3,828 square feet and the proposed impervious area is 3,820 square feet. Currently, the cubic rate of runoff per second is 0.95, in the post developed condition with the infiltration trench it will be reduced by about 40 percent.

Mr. Petersen said in the materials submitted by Advanced Engineering, who did the soil test, it was stated that no water table or bedrock was found within the proposed trench. He asked why additional drilling was not done outside of the proposed trench and Mr. Venafo said each drilling cost \$1,000.00.

Mr. Creed asked what the maintenance on an infiltration trench is and Mr. Venafo answered they have a recommended maintenance schedule he can pass around. There are quarterly inspections and every ten to fifteen years the gravel needs to be removed and cleaned.

Mr. Martin added if the owners ever sell the property they can add maintenance to the contract.

Mr. Potter asked if the 25.8 percent lot coverage proposal was still on the table and Mr. Martin said yes. Even though Town staff doesn't have the authority to recognize porous pavers, it is an engineering fact.

Mr. Dowler asked how often infiltration trenches are put in with single family dwellings and Mr. Venafro said it is common when soil permits. It is the most ideal way to control peak rate flow. He has put one in Town with no complaints and is currently proposing another.

Mr. Potter asked Mr. Gallagher if he agreed and Mr. Gallagher said yes. Infiltration trenches are common, especially in new subdivisions.

Mr. Dowler asked if they are commonly used on individual homes or only subdivisions and Mr. Gallagher answered they are usually used in subdivisions but the infiltration trenches are on the individual lots.

Mr. Petersen asked Mr. Gallagher to describe the Town's experience monitoring the maintenance of infiltration trenches. Mr. Gallagher answered that it is a challenge all localities are facing. Currently, the Town inspects all infiltration trenches once a year and if it is determined that maintenance needs to be done, a letter is sent to the homeowner.

Mr. Creed asked if the Town was inspecting infiltration trenches on private property or on common ground in subdivisions and Mr. Gallagher said private property. Wherever the trenches occur, there are easements called maintenance and inspection easements. With subdivisions there is language in the deed stating that the Town has maintenance and enforcement rights. If this application is approved then he would recommend that an easement be proposed as well.

Chairman Chumley asked Mr. Hembree about the language on page two of the staff report regarding what he can and cannot approve. Mr. Hembree replied that for about four years he had the authority to review engineering documentation regarding the pervious nature of grid-paver type of materials. He also made a determination of what the percentage of void space was, 60 percent. He was able to grant up to 60 percent of a credit on the surface. There are still some around. Some have failed and some have had maintenance issues. During a work session on October 30, 2007, the Mayor and Town Council determined that Planning and Zoning should not be making those interpretations because the data was being used to build larger homes on single family lots. Chairman Chumley asked what options that left the Board and Mr. Hembree replied that he felt the Board has the authority to grant the proposed driveway if they found it appropriate. Chairman Chumley asked under what circumstances the Board can grant the variance and Mr. Hembree said, as always, the Board needs to find that there is a clearly demonstrable hardship.

Mr. Martin said the Board would still be granting a variance for 29.8 percent but if they used the porous pavers it would be equivalent to 25.8 percent.

Mr. Hembree corrected that if the applicant uses the pervious pavers, he will create an Order that will indicate the total area of pervious cover and the 25.8 percent lot coverage. The applicant would need to specify on the plans exactly what the surface material is and submit engineering documentation to support it.

Chairman Chumley wondered if the Town Council should reevaluate the use of pervious pavers. Mr. Hembree said they have not indicated that they have any interest in doing so.

Mr. Harrison wished to address Mr. Martin's statement that there is an unreasonable restriction on the use of the lot. There was originally a garage apartment on the lot which was a reasonable use. That was remodeled and now there is a house on the lot which is also a valid use. The only restriction that he sees is that the owner cannot build as big of a house as he wants. He does not see how it restricts the use of his property.

Mr. Martin said he does not think that building a larger house than the tiny house that is there because of the shape of the property is an unreasonable request. He agrees that the previous application was unreasonable but not the current one. The house that is currently on the lot is not representative of the Town.

Mr. Gallagher informed the Board that Town staff had issues with the porous paver driveway because that area of the lot does not infiltrate. The applicant could propose something that had an under drain that goes to the road but in his opinion that would not reduce runoff it would just direct it. The application was submitted without the porous pavers because staff did not accept the validity. The soil in the area of the driveway was tested and it did not show that it could infiltrate the water. Unlike the infiltration trench, there would be no benefit.

Mr. Dowler said it would keep the water off the neighbor's property and Mr. Gallagher agreed.

Mr. Creed asked Mr. Gallagher if he disagrees with the applicant's statement that the 29.8 percent lot coverage will be reduced to 25.8 percent with the porous paver driveway and Mr. Gallagher said he has not seen a design but he knows that the soil was tested where the driveway will be and it will not infiltrate.

Mr. Creed asked how the applicants came up with these numbers and Mr. Venafro wished to clarify that he is speaking towards impervious area and peak rate. Lot coverage and how the Town interprets grid pavers is a different discussion. Mr. Gallagher is saying that he does not believe the driveway will infiltrate because the soil is not as good as the soil in the area of the infiltration trench. However, as far as lot coverage goes, this area can be interpreted as a 60/40 split as far as what counts towards lot coverage and what does not.

Mr. Potter asked if the porous driveway would be effective or not and Mr. Venafro answered that it would be more effective than if it was paved.

Mr. Hembree explained that Mr. Venafro was making reference to the lot coverage language in the Town Code and what does and does not count towards lot coverage. For example, walkways do not count towards lot coverage but they are of impervious nature and he believes that is what Mr. Venafro is making reference to. What Mr. Gallagher is saying is the Glenelg soil—that is found where the infiltration trench would go—is not the same kind of soil that can be found under the driveway. His concern is the long term effects of the porous driveway system and the collection of fine material over time, which tends to settle down and before long you have a new impervious surface underground. How long the driveway will be effective is hard to say but the long term answer to Mr. Potter's question asking if the driveway will be effective, in his opinion, is probably no.

It will not provide the type of lot coverage reduction that the Board is seeking. The Board needs to balance the request of the variance with the clearly demonstrable hardship. The Board needs to decide if it is comfortable with the 29.8 percent figure or the 25.8 percent figure, along with whatever provisions would be needed to maintain that effective lot coverage. He is glad Mr. Gallagher is here to help explain the issue because he believes it is vitally important to their review of the application.

Elaina Howard, speaking for her mother, Pansy Howard, of 827 Ninovan Road SE, was sworn in to speak. Ms. Howard said one of the things heard back in March was the owner did not have knowledge of the property being so limiting and he did not have intentions at that time to build a new home. Within 12 months of purchasing the property he was before the BZA with designs for a new home. At that time there were four variances being requested and there are still three being requested today. She lives in Ann Arundel County and was looking at using the same material being discussed for her own driveway. However, Ann Arundel County has now declared porous pavers impervious because of the same long term problems mentioned. Before a decision can be made regarding 25.8 percent or 29.8 percent, she thinks it needs to be studied more because the porous pavers are considered impervious by many standards and many counties. She also pulled the property records from the County and it shows an additional owner. She wonders what the interest of that second owner is. Property records indicate that the build-ability of the lot is poor. It was a matter of public record at the time the house was bought that the lot was not desirable in terms of building a home on it. If it was, the previous owner would have built larger. Yes, the neighborhood is expanding but most homes in the area are still 1,100 square foot homes and while that is changing, it is changing on lots that haven't required variances. The home that sits on the lot now is roughly 3 times larger than the surrounding homes. When asked if they tried to design a home within the 25 percent lot coverage, the answer was no. If this home is built, she is afraid her mother will be faced with an oversized house looming over her lot. The applicant needs to reduce the size of the house, increase the size of the lot or find a different lot; there are options available.

Paul Zagoda of 823 Ninovan Road SE was sworn in to speak. Mr. Zagoda said he agrees with the points being made. This is a small lot and it always was. The applicant still hasn't addressed the issue of water runoff onto his lot. The porous paver driveway is great but there are a lot of trees in the area and when it's covered with leaves, it won't drain. It is a small lot and it deserves a small house. The maintenance of the infiltration trench was not really addressed. He is concerned on how effective it will be over time, especially with all the leaves.

Mr. Creed said from the look of the plans, the house they want to build has a footprint of 2,400 square feet. He asked Mr. Hembree what is meant by footprint and Mr. Hembree answered the amount of land that is covered.

Ann Pennell of 903 Dale Court SE was sworn in to speak. Ms. Pennell said she is not affected by the water flow problem because her house sits above 825 Ninovan Road SE. She thinks this is a case of "buyer beware." It is a small lot and they want to build a large house. There are plenty of lots available in Vienna where they could build a large house that would not negatively impact the neighbors. She is concerned about the impact on the value of her home, having a large house on a small lot looming over her property.

Keith McCormick of 401 Fellini Court SE was sworn in to speak. Mr. McCormick said he is glad to see the Board taking the problem of runoff seriously. The two families who have testified tonight

have been very good neighbors. The Howards have been his neighbors for 30 years and are very courteous people who would never dream of doing something on their property that would negatively impact others. While he is not directly impacted by the property, he has to oppose the item because so many of his neighbors do.

Mr. Martin said the neighbors do not want his client to build a larger house but when they go to sell their houses, the next owner will probably build a larger house. They've got the variance request down to lot coverage which is the result of the driveway which is the result of the pipe stem lot. They tried to address the concerns about lot coverage and they especially tried to mitigate the runoff concerns. They can also curb the side of the driveway to keep water off of Mr. Zagoda's lot. They know the infiltration trench will keep the water off the Howard's property. Mr. Martin stated that he had been before the BZA and had 29.4 percent lot coverage approved. People are saying that this house would destroy the value of their property but he has never seen evidence of redevelopment negatively impacting value. They are open to any suggestions to improve the situation.

Mr. Creed said Mr. Martin mentioned the Board previously approved a 29.4 percent lot coverage application but every case needs to stand on its own. He asked Mr. Martin what the hardship is and Mr. Martin answered the exceptional shape of the lot, which is a pipe stem the Town no longer allows, creates a situation where you have a 100 foot driveway that takes up the majority of the lot coverage. Mr. Creed asked Mr. Martin if his client recognized that situation when they purchased the home and Mr. Martin said he did not.

Mr. Dowler asked if they build a house that meets all the Town Code requirements, will they be required to have an infiltration trench and Mr. Martin said no. Mr. Dowler asked if they are required to have a driveway and Mr. Martin said yes. Mr. Hembree explained that they are required to have a driveway and it must be paved.

Mr. Potter asked if they were now considering the 29.8 percent lot coverage figure and Mr. Martin said yes. He believes the porous paver driveway would help but he can't prove it and the Town won't accept it. However, putting a curb on the driveway would be an effective tool to mitigate the runoff concerns of the one neighbor.

Mr. Khosrow Goudarzi, owner of 825 Ninovan Road SE was sworn in to speak. Mr. Goudarzi explained that the other name listed on the property records of the house is his wife. He is a father and a husband trying to do the right thing and plan for the future of his family. He is very frustrated that his neighbors are so against his application. He is an engineer who deals with natural disasters and he has never before been met with such criticism. His neighbor says the erosion in their yard is from his house. Last year he tilled, planted grass and covered his yard with straw. He has put down mulch and planted 100 bushes around the border to help deal with the erosion. He has pictures he would like to show to prove that there is no erosion. It is impossible that his property could be causing any erosion. Any technical problem can be solved by a solution but he doesn't believe it is a technical issue. He has knocked on doors and tried to approach his neighbor but he won't talk to him. Last time he was asking for 39 percent lot coverage and now he is asking for 29 percent. His lot is 0.26 acres; it is not a small lot for the Town of Vienna. They reduced the proposed house by about 1,100 square feet from the last meeting. The inside of the house is only 23 feet deep.

Chairman Chumley called a ten minute recess.

Mr. Goudarzi continued that his neighbors say he should have bought elsewhere but they do not dictate where he buys.

Mr. Creed said the footprint of the house is 2,400 square feet which is built to the maximum the building restriction line allows. He asked Mr. Goudarzi if he considered doing less and Mr. Goudarzi said last time he was asking to deepen the house and this time he isn't. The house is only 23 feet deep. Mr. Creed said he could shorten the house and Mr. Goudarzi agreed and said he could cut a few feet.

Chairman Chumley asked if there were any additional questions or comments and as there were none, he closed the item.

ITEM NO. 2

Request for approval of a variance from Sections 18-24D, 18-167 and 18-169 of the Vienna Town Code to enclose an existing carport and add living space above - all situated beyond the side setback line on property located at 507 Moorefield Road SW and in the RS-12.5, Single Family Detached Residential zone. Filed by Bryan and Grace In, owners.

Mr. Bryan In and Ms. Grace In, owners of 507 Moorefield Road SW were sworn in to speak. Mr. In stated that he and his wife are requesting a variance to enclose an existing carport into a garage. The existing carport encroaches four feet into the setback. They purchased the home with the intention of adding a second story and enclosing the carport. They were not aware that the carport does not meet Code until they submitted their building plans. Without a garage they are unable to store items. The garage adds security, peace of mind and aesthetic benefit. They are putting a lot of money into the lot renovating the house and a garage would look much better than a carport. They originally planned to do a deck on top of the garage but they saw one recently and didn't like the way it looked so they have changed their mind.

Mr. Dowler asked Mr. Hembree if the garage would be allowed the way it is constructed if it were not for the six foot setback and Mr. Hembree said yes. Mr. Dowler wished to confirm that the six foot setback already exists with the carport and Mr. Hembree said yes. There are no records of how or why it was allowed to be built.

Chairman Chumley said a number of people are converting their carports to garages and Mr. Hembree agreed.

Mr. Petersen clarified that the applicants are asking to enclose an existing carport, they are not increasing the footprint at all and aside from the preexisting setback encroachment, they would be able to do it. Mr. Hembree said yes but wished the applicants to confirm that they are not increasing the footprint. Mr. and Ms. In confirmed that they are not increasing the footprint at all.

Chairman Chumley asked if there were any additional questions or comments and as there were none, he closed the item.

ITEM NO. 3

Request for approval of a variance from Sections 18-33F, 18-138 and 18-140 of the Vienna Town Code to construct a two-car detached garage in excess of maximum permitted lot coverage and outside the permitted rear yard location on property situated at 318 Center Street North and in the RS-10, Single Family Detached Residential zone. Filed by Wallace and Mary Berg, owners.

Mr. Wallace Berg and Ms. Mary Berg, owners of 318 Center Street North, were sworn in to speak.

Mr. Berg said they are asking for a variance to increase their one-car garage to a two-car garage.

Ms. Berg said they have a growing family and need lots of storage which is why they want to increase to a two-car garage. They did look at other options. Their backyard has a 12 percent grade slope going down to Difficult Run. If they were to put the structure in their rear yard, as the Code states, they would be stopping the flow of water.

Mr. Berg said they would essentially be creating a dam on the uphill side of the property.

Ms. Berg said they looked at the option of attaching it to the house but if they did so they would lose one of their bedrooms. They like the character of the house which they are trying to maintain and the neighbor that the structure would be closest to approves because he feels it would actually increase his privacy.

Mr. Harrison said that they are saying they are adding another garage just like the one they have now but in fact it looks like the new portion will go further back. Mr. Berg confirmed they are adding some extra room for storage. Mr. Harrison said it looks like instead of doubling their garage they are quadrupling it. Ms. Berg said she doesn't think it is quite that big. Mr. Harrison asked why they would be giving up a bedroom if they were to attach the garage and Mr. Berg answered that a window would be lost and therefore that room could no longer be a bedroom.

Mr. Petersen said the applicants may feel they've stated their hardship but he asked them to state it again very clearly.

Mr. Berg said the current one-car garage is already in violation of the Town Code. It may have originally been placed in rear of the home but after the addition was put on, it became the side of the home. The Town suggested putting the garage addition on the back but that would create a damn and also require a longer driveway which increases impervious surface and is not visually appealing.

Chairman Chumley said it is unique the way the garage is placed and Mr. Berg agreed.

Mr. Dowler said he is not following the drainage issue and asked Mr. Berg to show him where the water flows and how the garage would block it. Mr. Berg showed on a diagram what Mr. Dowler was asking.

Mr. Petersen said that in their introductory the Bergs used the word "fall" for the water flow. He asked if since their house faces NE, the water is coming from SE and Ms. Berg said yes.

Mr. Creed said looking at the topography it looks like there's about a six to seven foot drop.

Hermes Aleman of 104 Sharon Lane NW was sworn in to speak. Mr. Aleman said he lives behind the Bergs. If they were to put the garage further back, it would push water onto his property. Mainly, he just wants to make sure if they do any construction they will follow the noise ordinance.

Chairman Chumley asked if there were any additional questions or comments and as there were none, he closed the item.

**BOARD OF ZONING APPEALS
REGULAR MEETING
MINUTES
October 16, 2013**

The Board of Zoning Appeals (BZA) met in regular session to review three (3) advertised public hearings in the Council Room of the Vienna Town Hall located at 127 Center Street, South, Vienna, Virginia, on October 16, 2013, beginning at 8:00 PM with Donald Chumley presiding as Chair. The following members were present: Marshall Potter, Robert Dowler, Robert Petersen, George Creed and William Harrison. Also attending and representing staff were Gregory M. Hembree, AICP, Director of Planning & Zoning, Mike Gallagher, Deputy Director of Public Works and Emily Goodman, Board Clerk. Absent was Board member Gregory Haight.

ITEM NO. 1

Request for approval of a variance from Sections 18-33F, 18-134A and 18-208 of the Vienna Town Code to construct a new dwelling in excess of maximum permitted lot coverage, with a driveway design in conflict with the Town Code and on a nonconforming lot located at 825 Ninovan Road SE and in the RS-10, Single Family Detached Residential zone. Application filed by Smith Engineering, agent for Khosrow Goudarzi, owner.

Mr. Petersen said he would make a motion against the item if there was no motion for the item.

Mr. Dowler made a motion to approve the request of a variance from Sections 18-33F, 18-134A and 18-208 of the Vienna Town Code to construct a new dwelling at 825 Ninovan Road SE in excess of 25 percent lot coverage and with a nonconforming driveway with the further condition that an infiltration trench be required as indicated on submitted plans and the driveway contain a curb to protect the adjacent property from runoff.

Mr. Creed wished to amend the motion that a maintenance easement be required as suggested by Mr. Gallagher.

Mr. Dowler supported his motion by saying the hardship is the odd shape of the lot, a pipe stem, which requires an extended driveway and is dissimilar to others in the immediate area. He is pleased to see the applicant had entirely new plans that are within the setback and height restrictions. The necessarily long driveway is what is causing him to exceed lot coverage and others don't have that problem. Considering the property, 29.4 percent lot coverage is not unreasonable.

Mr. Creed added that the applicant would be able to build the house by right if not for the driveway. He thinks the drainage problem has been addressed. What bothers him is they are building right to the building restriction line on all sides. He would like to see that reduced. He's not sure the lot is meant for a house with a footprint of 2,400 square feet. However, if not for the driveway, it would be by right and he thinks the Board must consider that.

Mr. Potter said he doesn't see the hardship. He thinks the runoff is excessive and he does not support the motion.

Mr. Harrison said he agrees that except for the driveway this house could be built but it is still a pretty big house on a pretty small lot. The proposed house is not out of style for the surrounding area but it will for some time overshadow the neighbors.

Mr. Petersen said he enjoyed the thoughtful presentations made by everyone on this matter. He said Mr. Martin said they are proposing the bare minimum to get reasonable use out of the lot, but he does not agree. He has not seen a hardship that supports construction that would cover 29.8 percent of the lot. He agrees that pipe stem lots are rare but pipe stem lots have advantages and disadvantages. One of the advantages is you get a lot that otherwise wouldn't be available. To grant this variance would be going against the Town Council's intent to not consider porous pavers pervious surface. They are an independent board but he doesn't think the Board should move unnecessarily contrary to the intent of the Town Council which has the responsibility of the building code for the Town of Vienna. What bothers him in particular about this application is that it is for new construction and when he asked if they tried to get a design that would not exceed the 25 percent lot coverage, the answer was no. He feels for new construction the property owner should have attempted to come up with something that conforms to the Code. For those reasons he will oppose the item.

Chairman Chumley agreed that he is disturbed when he feels the Board is going in the opposite direction from precedents that the Town Council sets. He is also bothered by the universal opposition from the neighbors.

Mr. Petersen added there has been a lot of testimony about water abatement and how with certain provisions the lot coverage would be 25.8 percent. However, as interpreted by the Town Code, it is 29.8 percent. Even though a requirement of maintenance of the water abatement provisions has been added into the motion, that is what the vote is on tonight; there is no equivalency.

Mr. Dowler said it is within the authority of the Board to grant a variance from the three Code sections being reviewed. They are not going outside the scope of their authority. The motion he made is based on the proposal for lot coverage of 29.8 percent. He added the curb to the driveway but the porous pavers are not part of his motion. The infiltration trench will be a benefit to at least one of the neighbors and won't necessarily be available without the variance.

Mr. Creed said if the footprint was reduced from 2,400 square feet to 1,900 square feet, the lot coverage would only be 25.4 percent and they could still have a 3,600 square foot home, which is not an unreasonably sized home. He would be ok with 25.4 percent lot coverage.

Mr. Harrison said he was having trouble making up his mind but Mr. Petersen's point of the home being new construction and therefore the owner had a responsibility to try to build within the Code, helped him make up his mind. He will be voting against the item.

Chairman Chumley called the item to vote.

Motion: Dowler

Second: Creed
Failed: 5-1

Aye: Dowler
Nay: Harrison, Creed, Petersen, Chumley, Potter
Absent: Haight

ITEM NO. 2

Request for approval of a variance from Sections 18-24D, 18-167 and 18-169 of the Vienna Town Code to enclose an existing carport and add living space above – all situated beyond the side setback line on property located at 507 Moorefield Road SW and in the RS-12.5, Single Family Detached Residential zone. Filed by Bryan and Grace In, owners.

Mr. Potter made a motion to approve the request of a variance to enclose an existing carport into a garage at 507 Moorefield Road SW.

Mr. Petersen asked if they were to approve a housekeeping motion as to the existing encroachment on the carport, would a variance still be needed and Mr. Hembree answered yes. They would still need a variance for the new construction.

Mr. Potter supported his motion by saying most houses in neighborhood have a two-car garage, the encroachment is minimal and the neighbors are ok with it.

Mr. Harrison added that the footprint is not increasing and the carport has been there since the home was built.

Mr. Petersen agreed with Mr. Harrison. It is important to note that the footprint is not increasing.

Motion: Potter
Second: Harrison
Approved: 6-0

Absent: Haight

ITEM NO. 3

Request for approval of a variance from Sections 18-33F, 18-138 and 18-140 of the Vienna Town Code to construct a two-car detached garage in excess of maximum permitted lot coverage and outside the permitted rear yard location on property situated at 318 Center Street North and in the RS-10, Single Family Detached Residential zone. Filed by Wallace and Mary Berg, owners.

Chairman Chumley made a motion to approve the request of a variance to construct a two-car detached garage in excess of lot coverage and outside the permitted rear yard location at 318 Center Street North.

Mr. Creed seconded the motion but said he was concerned with the size of the garage. It is going from 20 feet deep to 37 feet deep. That is more than a two-car garage.

Mr. Petersen said he opposes the motion. The proposed construction has 57.18 percent encroachment which is excessive. He did not hear any testimony that convinced him of a hardship.

Mr. Harrison agreed with Mr. Petersen.

Chairman Chumley said he feels the proposed garage fits with the house and neighborhood and the requested placement would help with the water situation.

Motion:	Chumley
Second:	Creed
Failed:	4-2

Aye: Chumley, Potter

Nye: Dowler, Petersen, Creed, Harrison

Absent: Haight

Chairman Chumley suggested the applicants talk to Mr. Hembree about possibly coming up with a new application with a smaller garage.

Mr. Harrison said a concern he had that could be addressed is whether or not the garage extension would create more of a water problem.

Approval of the Minutes

Mr. Petersen made a motion to approve the minutes of the September 18, 2013 meeting with the inclusion of four edits on page two he has submitted to the Clerk.

Motion:	Petersen
Second:	Dowler
Approved:	6-0

Absent: Haight

Adjournment

Mr. Harrison made a motion to adjourn the meeting at 10:45 PM.

Motion: Harrison
Second: Creed
Approved: 6-0

Absent: Haight

Respectfully submitted,

Emily L. Goodman,
Clerk of the Board of Zoning Appeals